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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.            | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------------|------------------|
| 09/933,957   | 08/20/2001  | Jeff Jacob Brauer    | Q92694                         | 7951             |
| 23373 7590 04/12/2007<br>SUGHRUE MION, PLLC<br>2100 PENNSYLVANIA AVENUE, N.W.<br>SUITE 800<br>WASHINGTON, DC 20037 |             |                      | EXAMINER<br>VAN BRAMER, JOHN W |                  |
|  |             |                      | ART UNIT                       | PAPER NUMBER     |
|  |             |                      | 3622                           |                  |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 04/12/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/933,957

Applicant(s)

BRAUER, JEFF JACOB

Examiner

John Van Bramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2006 and 28 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21, 22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21, 22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information-Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on 24 August 2006 and 28 November 2006 have been entered.

### *Response to Amendment*

2. The amendment filed on 24 August 2006 and 28 November 2006 cancelled claim 23. Claims 21 and 22 have been amended and no new claims were added. Thus, the currently pending claims considered below are Claims 21-22 and 24-25.
3. The Declaration filed on November 28, 2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the rejection of Claims 21, 22, 24, and 25 using the Forward (U.S. Patent Number: 6,578,011) in view of Good et al. (U.S. Patent Number: 6,314,404) references.
  - a. The examiner has only considered exhibits 18-20, 35, and 46-50. All other exhibits were published after the <sup>DATE</sup> in which the application was filed. The

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examiner must base his rejection upon the skill of one of ordinary skill in the art at the time of the invention.

- b. Exhibit 18 discloses a rental customer purchasing a home and states: "The growing popularity of the Internet among buyers and renters has much to do with convenience" as well as "Besides providing information about homes for sale and apartments for rent, many sites also feature links to ancillary real estate services". These statements support the examiners contention that real estate sales and real estate rental are analogous ( or similar) because the article describes a person purchasing a house and then relates the same benefit being provide to a buyer are also being provided to renters.
- c. Exhibit 19 discloses a single customer that makes a decision between ownership and rental. The real estate market therefore, consists of consumers that must make a competitive decision as to whether to purchase or rent. The article points that rental and sales draw from a common customer base.
- d. Exhibit 20 discloses no information that disputes the examiners contention that real estate sales and real estate rental are analogous arts the fall under the real estate market segment.
- e. Exhibit 35 discloses home owners electing to rent their homes instead of selling them. This, again, supports that the art used by the examiner is analgous.
- f. Exhibits 46-50 discloses an inverse relationship between real estate rental and real estate sales. Exhibit 46 states that "the rental side picks up when the for-sale market is not so hot". A relationship between the rental and sales is

presented and thereby a similarity established. They both have a similar customer base and they both contain similar products.

***Claim Rejections - 35 USC § 112***

4. The amendment filed on 24 August 2006 and 28 November 2006 has overcome the 35 U.S.C. 112, second paragraph rejection of claim 23 by canceling the claim. Therefore, the examiner hereby withdraws the rejection.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21, 22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forward (U.S. Patent Number: 6,578,011) in view of Good et al. (U.S. Patent Number: 6,314,404).

Claim 21: Forward discloses a computer implemented real estate method, comprising:

- a. Creating, at a real estate host computer, a client profile relating to a user. (Col 7, lines 45 – 50 and Col 8, lines 18 – 23)

- b. Receiving, from the user, property search criteria. (Col 5, lines 3 – 19)
- c. Retrieving descriptions related to real estate matching the property search criteria, including a brief narrative, and one or more photographs for display to the user. (Col 5, lines 3 – 19)
- d. Receiving confirmation that the user entered a contract for one the real estate properties. (Col 6, lines 4 – 52)
- e. Collecting, from a real estate seller, a transaction fee. (Col 6, lines 4 – 52)
- f. Paying the user a rebate amount that has a predetermined, fixed value. (Col 6, lines 4 – 52)

While Forward does not specifically state that the invention is for rental real estate, the analogous teachings of Good et al. describe a similar real estate transaction method that is used in rental transaction. The method disclosed in Good et al contain a broker computer system which accepts rental property search criteria from a customer, returns rental real estate descriptions, receives confirmation that a user entered a lease agreement, collects a fee from the lessor, and provides the customer with an inducement (Good et al: Col 3, line 44 through Col 4, line 20 and Col 5, line 63 through Col 6, line 26). Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to include rental properties in the type of real estate transactions method disclosed by Forward. One would have been motivated to include rental properties in order to increase the volume of properties from which a customer can select, as well as increase the potential brokers revenue generating opportunities. Another motivation for including rental

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properties in the invention would be that such an inclusion would merely be an addition to the disclosed intended use and require little to no modification to the system disclosed.

Claim 22: Forward and Good et al. disclose the real estate rental method as set forth in claim 21, further comprising assigning the user a discount code (the incentive information inherently contains a specific code in order for the system to match the correct incentive with the proper customer), associated with a selected one of the apartments, wherein the discount code is used when the rebate is obtained. (Forward: Col 5, lines 20 – 40 and Col 6, lines 4 – 29)

Claim 24: Forward and Good et al. disclose the real estate rental method as set forth in claim 21, further comprising collecting, from the lessor of the apartment, a hosting fee for hosting a website listing of the apartment. (Forward: Col 6, lines 4 – 29)

Claim 25: Forward and Good et al. disclose the real estate rental method as set forth in claim 21, further comprising collecting, from the user, qualifying financial information. (The ability to share information gathered by the item locator system, such as credit rating, with incentive providers is disclosed)(Forward: Col 6, line 53 through Col. 7, line 26). While Forward is silent with regard to allowing the lessor to view the qualifying information of the user. It would have been obvious to one of

ordinary skill in the art at the time of the invention to share the information gathered about potential tenants with lessors as well as incentive providers. One would have been motivated to do this in order to ensure that the lessor is able to make a decision quickly with regard to renting to the customer. This would result in more timely payments from the lessor to the broker system.

### ***Response to Arguments***

7. Applicant's arguments with respect to the claims 21, 22, 24 and 25 have been considered but are moot in view of the new ground(s) of rejection.

*En* a. The applicant argues that <sup>G</sup>good lacks any teaching or suggestions as to the incentive, other than that it was previously presented. The examiner reminds the applicant that Good is the secondary teaching in the rejection of Claim 21 and that the Forward reference contains the teaching of the incentive as applied to the claim. However, the examiner also points that the applicant admits that the Good reference provides the incentive to the tenant once the application is received on page 5 lines 1-2 of the applicant remarks.

- b. The applicant argues that the examiners motivation for combining the Forward and Good references is not convincing. The applicant uses the statement that the Forward reference is "drawn to a method by which a builder can sell its own homes in a new development without having to pay a commission to a broker" and therefore it would not make sense for the builder to add listings of competing rental apartments. However, the Forward reference is directed toward "bringing



together buyers and sellers of items” (Col 2, lines 5-10). While a builder of new homes in a new development can certainly participate in the disclosed invention, the invention is in no way limited to a single seller. Therefore, the applicants arguments to the contrary, have not providing a compelling argument, as to why the motivation provided by the examiner is unconvincing.

- c. The applicant argues that the “ease of modifying one system to create another, however, is truly unrelated to whether the motivation to make such a modification exists”. However, the examiner reminds the applicant that the difference is merely “intended use”, as the examiner stated. Accordingly, if a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997)
- d. In regards to claim 22, the applicant argues that Forward does not disclose the use of a discount code and that “the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish inherency”. The examiner points to Col 5, lines 20-40 in which the types of incentives and Col 6, lines 4-29, which discloses the process for redemption of the incentive and Col 6, lines 42-52 which discloses the execution of the incentive. In order to operate as disclosed, the argument put forth by the examiner is that a discount code must inherently be included (not may be included) in order to provide and redeem the incentive in the disclosed manner.

e. In regards to claim 25, the applicant argues that Forward does not disclose the collecting of qualifying financial information. However, as noted in the rejection of claim 25, Forward discloses the collecting of such information in Col 6, line 53 through Col. 7, line 26. The broad term qualifying financial information encompasses information such as credit rating. Therefore, the data is collected as claimed. Forward also discloses that the seller and the buyer negotiate a contract for the purchase (Col 5, lines 50-52). Contrary to the applicant's assertion that the argument put forth by the examiner appears to have come from the applicant disclosure, the argument actually stems from the fact that when a seller enters a contract for large purchases it is customary to check the credit of the purchaser. Since such information is available in the disclosed system it would be obvious to provide such information to the seller.

### ***Conclusion***

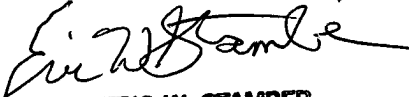
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 9am - 5pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*gjb*  
jvb

  
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